

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

JOGA SINGH JOHAL,
Defendant.

No. CR-02-214-FVS

ORDER DENYING THE
DEFENDANT'S "MOTION TO
REVISE AND REDUCE A
SENTENCE PLEA"

THIS MATTER came before the Court without oral argument on January 3, 2013, based upon the defendant's "Motion to Revise and Reduce a Sentence Plea." He is representing himself. The United States is represented by Russell E. Smoot.

BACKGROUND

On August 20, 2002, Joga Singh Johal was charged in a superseding indictment with two counts of distribution of pseudoephedrine and one count of possession of pseudoephedrine with intent to distribute. 21 U.S.C. § 841(c)(2). Mr. Johal exercised his right to trial by jury. The first jury was unable to agree unanimously upon a verdict. The United States requested a second trial. Mr. Johal did not deny he had possessed and sold large quantities of pseudoephedrine on the dates in question. Rather, he alleged his knowledge of English was so limited

1 that he neither knew, nor reasonably should have known, a purchaser
2 was going to use the pseudoephedrine to make methamphetamine. His
3 attorney presented lay and expert testimony in support of his
4 allegedly limited understanding of English. The second jury rejected
5 the defendant's allegation of ignorance; finding him guilty as
6 charged. Sentencing took place on December 12, 2003. The Court
7 departed below the range prescribed by the Sentencing Guidelines and
8 sentenced him to a term of 70 months incarceration. He appealed his
9 conviction and sentence. The Ninth Circuit affirmed his conviction on
10 August 30, 2005, but remanded the matter so the Court could determine
11 whether it would have imposed the same sentence had it known the
12 United States Sentencing Guidelines were advisory. The Court declined
13 to modify his sentence. He began serving his sentence on June 15,
14 2006. On May 15, 2007, he sought relief under 28 U.S.C. § 2255. He
15 alleged his trial attorney had failed to adequately document his
16 inability to understand English. On March 26, 2008, the Court
17 rejected Mr. Johal's § 2255 motion in a detailed, 11-page order. The
18 Ninth Circuit affirmed on February 20, 2009. Although the record is
19 unclear, it appears he has completed his prison sentence and is now in
20 the custody of the Bureau of Immigration and Customs Enforcement
21 ("ICE") and is facing removal from the United States. On November 27,
22 2012, the District Court Executive received a letter from Mr. Johal.
23 The letter is perplexing. Mr. Johal claims he pleaded guilty. He
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1 alleges his attorney failed to inform him a plea of guilty would
2 result in removal from the United States. He makes an oblique
3 reference to *Padilla v. Kentucky*, --- U.S. ----, 130 S.Ct. 1473, 176
4 L.Ed.2d 284 (2010). He asks the Court to vacate his conviction and
5 allow him to plead guilty to some lesser charge so he can avoid
6 removal from the United States.
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8 **RULING**

9 There are at least two problems with Mr. Johal's request for
10 relief. The first is jurisdictional in nature. It appears Mr. Johal
11 has completed his prison sentence and is in the custody of ICE. It is
12 unlikely this Court has authority under 28 U.S.C. § 2255 to review the
13 validity of his conviction. To the contrary, it is likely he could
14 invoke the Court's jurisdiction only by petitioning the Court to issue
15 a Writ of Coram Nobis and, at the same time, petitioning ICE to stay
16 its proceedings while this Court assesses his eligibility for post-
17 conviction relief. There is no indication he has taken either step.
18 Which is not to suggest he could succeed if he had properly invoked
19 this Court's jurisdiction. Even if this Court had authority to
20 consider his motion, there is a second (and insurmountable) problem
21 with his request for relief. He did not plead guilty. He exercised
22 his right to a jury trial, and the jury convicted him. As a result,
23 *Padilla* is inapposite. He may not challenge his conviction under that
24 case.
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